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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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HARBINGER CAPITAL PARTNERS MASTER	:
FUND I, LTD., ET AL.,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
WACHOVIA CAPITAL MARKETS, LLC D/B/A	:
WACHOVIA SECURITIES, ET AL.,	:
	:
Defendants.	:
----- X	

07-CV-08139 (DC)

Hon. Denny Chin

ELECTRONICALLY FILED

AFFIRMATION OF HARVEY KURZWEIL

I, Harvey Kurzweil, an attorney duly admitted to practice law in the State of New York, hereby affirm under the penalty of perjury as follows:

1. I am a member in good standing of the Bar of the State of New York and a partner in the law firm of Dewey & LeBoeuf LLP, counsel for Defendant Wachovia Capital Markets, LLC ("WCM") in the above-captioned action. I submit this affirmation in support of WCM's motion, pursuant to Federal Rules of Civil Procedure

12(b)(1) and (6), for an order dismissing, without prejudice, plaintiffs' claims against WCM for conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act ("RICO") pursuant to 18 U.S.C. §1962(d) on ripeness grounds and their pendent state law claims for fraud, aiding and abetting fraud, negligent misrepresentation and civil conspiracy for lack of federal subject matter jurisdiction.

2. Attached hereto as Exhibit A is a true and correct copy of plaintiffs' Complaint, dated September 17, 2007.

3. Attached hereto as Exhibit B is a true and correct copy of the Fifth Amended Verified Statement of Brown Rudnick Berlack Israels LLP and Manion McDonough & Lucas, P.C. Pursuant to Fed. R. Bankr. P. 2019(a), dated June 20, 2007, with exhibits thereto.

4. Attached hereto as Exhibit C is a true and correct copy of the Proof of Claim, filed on March 16, 2007 in the *In re Le-Nature's* bankruptcy proceedings by Wachovia Bank, National Association individually and as Administrative Agent, with exhibits thereto.

5. Attached hereto as Exhibit D is a true and correct copy of the Second Amended Disclosure Statement with Respect to Second Amended Joint Chapter 11 Plan of Liquidation of the Official Committee of Unsecured Creditors, the Ad Hoc Committee of Secured Lenders, and the Ad Hoc Committee of Senior Subordinated Noteholders, dated June 18, 2007.

6. Attached hereto as Exhibit E is a true and correct copy of the Supplemental Response of the Official Committee of Unsecured Creditors, the Ad Hoc Committee of Secured Lenders, and the Ad Hoc Committee of Senior Subordinated

Noteholders to (A) Court's Order to Show Cause Why Cases Should Not be Dismissed and (B) Motion of Wachovia Bank, National Association to Convert Cases to Chapter 7, dated August 16, 2007, with exhibits thereto.

7. Attached hereto as Exhibit F is a true and correct copy of a portion of the Transcript of Oral Argument before the Honorable M. Bruce McCullough, United States Bankruptcy Judge for the Western District of Pennsylvania, in the *In re Le-Nature's, Inc.* bankruptcy proceedings, dated August 21, 2007.

8. Attached hereto as Exhibit G is a true and correct copy of the Second Amended Joint Chapter 11 Plan of Liquidation of the Official Committee of Unsecured Creditors, the Ad Hoc Committee of Secured Lenders, and the Ad Hoc Committee of Senior Subordinated Noteholders, dated June 18, 2007.

Executed on November 13, 2007.

/s/ Harvey Kurzweil